

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

RAMON BOYCE,

Petitioner,

: Case No. 3:21-cv-216

- vs -

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

TIM SHOOP, Warden,
Chillicothe Correctional Institution,

:

Respondent.

DECISION AND ORDER

On July 21, 2022, Petitioner filed a Supplement to his Motion to Expand the Record (ECF No. 36) which Respondent opposed on August 18, 2022 (ECF No. 40). Having reviewed the Memorandum in Opposition, the Magistrate Judge wrote:

1. The body of the Memorandum refers to a Report and Recommendations purportedly filed at ECF No. 10 (See ECF No. 40 at PageID 4712). ECF No. 10 is actually a Notation Order.
2. On July 22, 2022, the Magistrate Judge entered an order requiring Respondent's counsel to respond to four questions about the documents Boyce proposed to add not later than its response to the Motion to Expand (ECF No. 37). The Memorandum in Opposition does not respond to these questions.
3. The Memorandum in Opposition was filed August 18, 2022, but the Court had just granted an extension of time to September 6, 2022.

(Suggestion of the Need to Correct Record Reference, ECF No. 41). On September 6, 2022, the Court granted Petitioner an extension of time to file his reply/traverse (ECF No. 43). In the body

of that Notation Order, the Court wrote: “Respondent must respond to the most recent Court orders in this case.”

Respondent has not done so. On November 7, 2022, Petitioner filed a Corrected Motion to Expand the Record (ECF No. 46) and a Corrected Motion for a further extension of time to file his reply/traverse (ECF No. 47). Petitioner essentially asks the Court to rule that Respondent’s failure to respond to the Court’s Orders be taken as a concession of the motions to expand.

While the Local Rules of this Court allow the Court to grant unopposed non-dispositive motions, the Supreme Court of the United States has placed severe limits on expansion of the record in habeas corpus cases. See *Cullen v. Pinholster*, 563 U.S. 170 (2011); *Shinn v. Martinez Ramirez*, 596 U.S. ___, 142 S.Ct. 1718 (2022). Therefore the Magistrate Judge is reluctant to apply this case law without Respondent’s input.

It is accordingly ORDERED:

1. Respondent shall respond to the questions posed by the Magistrate Judge in the Decision and Order of July 22, 2022 (ECF No. 37) not later than December 1, 2022.
2. Petitioner’s time to file his reply/traverse is extended to and including the thirtieth day after documents are filed in response to any order to expand the record issued on Petitioner’s currently pending motion for that relief.

November 15, 2022.

s/ *Michael R. Merz*
United States Magistrate Judge